

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRR-1533-2012 (O&M)

Reserved on: *January 19, 2023*

Date of Decision: *January 27, 2023*

Ram Kumar @Raj Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Vivek Puri, J.

The petitioner has assailed the judgments of the Courts below vide which he has been convicted and sentenced for having committed the offence punishable under Sections 279, 304-A of the Indian Penal Code (for short 'IPC').

The facts as put forth by the prosecution are to the effect that on 15.09.2007, Banarsi Dass deceased was returning back to his village while sitting in a two-seater, Ashok Kumar, his son, was returning back to his house

from the fields. The deceased was sitting on the right side of the driver. At about 5 p.m., a tractor came from the side of Village Hathwala and later on the name of the driver revealed as Ram Kumar son of Krishan. A cultivator was also attached with the tractor and it was being driven in a rash and negligent manner. The prongs of the cultivator struck with the legs of the father of Ashok Kumar, complainant and dragged him upto some distance. An alarm was raised by the other passengers and the driver slipped away along with the tractor from the spot. Many people from the village were attracted at the spot. The complainant along with his brother Ramkesh and Dharamvir, made arrangement for a vehicle and took the victim to PGIMS Rohtak but the deceased succumbed to the injuries on the way. It has been alleged that the petitioner had driven the tractor attached with the cultivator in a rash and negligent manner and it resulted in the death of the father of the complainant.

On completion of the investigation, the challan was presented in the Court. The copies of the documents as envisaged under Section 207 of the Code of Criminal Procedure (for short `Cr.P.C.) were supplied to the petitioner. A prima facie case under Sections 279 and 304A IPC was made out against the petitioner. Accordingly, the charge was

framed. The contents whereof were read over and explained to the petitioner, who pleaded not guilty and claimed trial.

To substantiate its version, the prosecution has examined five witnesses, besides producing the documentary evidence. The statement of the petitioner under Section 313 Cr.P.C. was recorded and he had tendered in evidence the copies of the statements of the complainant and Bare Singh which were recorded in the proceedings for compensation under Section 166 of the Motor Vehicles Act.

The petitioner was convicted by the learned trial Court in terms of the judgment dated 18.11.2011 and was sentenced in terms of the order dated 18.11.2011 as following:

Under section 279 IPC	Rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in case of non payment of fine, convict shall further undergo rigorous imprisonment for one month.
Under section 304-A IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in case of non payment of fine, convict shall further undergo rigorous imprisonment for three months

It was further directed that both the sentences shall run concurrently.

The petitioner had preferred an appeal against the judgment of the conviction and order of sentence and the same has been dismissed by the Court of learned Sessions Judge, in terms of the judgment dated 11.05.2012.

The present revision has been preferred by the petitioner assailing the aforesaid judgments.

Learned counsel for the parties have been heard and record has been perused.

Learned counsel for the petitioner has argued that Ashok Kumar, PW1 and Bare Singh, PW2, are the son and nephew of the deceased, respectively. The other persons traveling in the two-seater (three wheeler) have not been examined. The version given by the alleged witnesses to the occurrence is discrepant. They have been introduced at a later stage being relatives of the deceased. The name of the petitioner is Raj Kumar and is not known by the name of Ram Kumar as mentioned in the FIR. Furthermore, in the statement Ex.PW1/A of Ashok Kumar, PW1, on the basis whereof the FIR has been registered, the registration number of the tractor has not been specified. It has also been mentioned that the name of the driver of the tractor later on revealed as Ram Kumar, but the complainant has not specified the source of his information. Even there is

overwriting on the time as mentioned in the endorsement Ex.PW5/A recorded by the Investigating Officer on the statement of the complainant. As per the version of Ashok Kumar, PW1, he had submitted a complaint to the police officials on 15.09.2007. Significantly, the said complaint has not been proved on record and the first version of the case has been concealed. The statement Ex.PW1/A of Ashok Kumar, PW1, has been recorded on 16.09.2007 after delay and as a result of deliberation to falsely implicate the petitioner. Significantly, the post mortem report and the inquest report have not been proved on record. There is lack of material to indicate that the petitioner was driving the tractor or the same was being driven in a rash and negligent manner and on account of injuries suffered in any such occurrence, the death has occurred.

On the contrary, while supporting the judgments of the Courts below, the learned State counsel has argued that there is sufficient proof of rash and negligent driving on the part of the petitioner in driving the tractor attached with the cultivator which resulted in the death of Banarsi Dass, deceased. There cannot be any bar to base the conviction on the basis of the statements of the relatives.

At the very outset, it may be mentioned that Ashok Kumar, PW1, is the son and Bare Singh, PW2, is the nephew of the deceased. They are said to be the eye

witnesses to the occurrence. They have been examined to put forth the eye witness count with regard to the occurrence. There cannot be any bar to base the conviction on the basis of the testimony of the witnesses who are shown to be the relatives of the deceased. However, the material on record should not indicate that they have been introduced at a subsequent stage to falsely implicate the petitioner. The deposition of such witnesses is required to be evaluated minutely with due care and caution.

The occurrence took place on 15.09.2007 in the evening hours. The first version of the case has been unfolded in the statement Ex.PW1/A of Ashok Kumar, PW1, which has been recorded by ASI Gianender Singh, PW5. The endorsement Ex.PW5/A recorded by ASI Gianender Singh, PW5, indicates that there is an over-writing with regard to the time when the statement was recorded. The said statement was recorded on 16.09.2007. It is emerging in the statement of Ashok Kumar, PW1, that on 15.09.2007, he had submitted an application to the police with regard to the accidental injuries suffered by his father. Significantly, no such application has been produced and proved on record. In the event, Ashok Kumar, PW1, had submitted any such application to the police officials, it would have reflected the first version with regard to the occurrence. In such circumstances, the possibility cannot be ruled out that the

statement Ex.PW1/A recorded on the following day may be a result of deliberation and consultation and as a result of afterthought.

Even otherwise in the statement Ex.PW1/A, Ashok Kumar, PW1, had stated that later on, he came to know the name of the driver as Ram Kumar. Significantly, the petitioner is alleging that his name is Raj Kumar. There is lack of material on record to indicate as to how and under what circumstances, Ashok Kumar, PW1, later on came to know the name of the driver of the tractor to be Ram Kumar. Even the registration number of the tractor has not been specified in the statement Ex.PW1/A. There is nothing to indicate that in what manner, the registration number of the tractor became known to the investigating agency. The prosecution was required to sufficiently prove and establish the identity of the petitioner to be driver of the offending vehicle. In the event, the petitioner had left the tractor at the spot and slipped away as emerging in the cross-examination of Ashok Kumar, PW1 and Bare Singh, PW2, the registration number of the offending vehicle would have been reflected in the statement Ex.PW1/A. Significantly, the owner of the offending vehicle i.e. tractor has not been joined in the investigation of the case. It is further emerging in the statement of ASI Gianender Singh, PW5, that he does not know the name of the owner of the tractor and even his

statement was not recorded during investigation. It may be mentioned here that Ashok Kumar, PW1 in his statement Ex.PW1/A has deposed to the effect that the driver of the tractor slipped away along with the tractor. However, in the cross-examination of Ashok Kumar, PW1, as well as, Bare Singh, PW2, it is emerging that the driver of the tractor slipped away from the spot after leaving the tractor.

There is another significant aspect emerging in the instant case. The inquest report has not been proved and even the doctor who had conducted the post mortem examination of the deceased has not been examined. Although, the public prosecutor had tendered into evidence the report of the post mortem examination (Mark A), but it cannot be termed to be a sufficient proof of the post mortem examination report. The learned trial Court has observed that the statement of the medical officer could have only been the corroborative piece of evidence and non examination of the medical officer qua post mortem report does not discard the substantive evidence available on file. Even the learned lower appellate Court has relied upon the post mortem examination report (Mark `A') and also observed that the inquest report though not exhibited, but a part of the trial Court record which is evident to the fact of the death of Banarsi Dass.

It may be mentioned here that merely because the document has been placed on record of the trial Court cannot be termed to be circumstance to dispense with its formal proof. The author of the document was required to be examined to prove the post mortem report and also the inquest report. The purpose of the post mortem examination is to ascertain and determine the cause of death. The detail of injuries and if the same can be caused in the alleged occurrence are to be borne out from the post mortem examination report and for the proof thereof the medical officer/forensic expert who has conducted the post mortem/autopsy is required to be examined during the course of trial. The version of the prosecution is to the effect that prongs of the cultivator struck with the legs of the deceased and dragged him and it resulted in his death. The injuries on the legs or injury marks on the body part on account of dragging could have been ascertained only of the proof of the post mortem examination report in accordance with law. This aspect of the matter clubbed with the other circumstances as observed aforesaid render the case of the prosecution to be doubtful.

The case of the prosecution cannot be termed to be free from reasonable doubt and the petitioner is held entitled to the benefit of doubt.

For the aforesaid discussions, the judgments of both the Courts below are set aside. The petitioner is acquitted. Fine, if any, deposited be refunded.

Instant petition stands allowed.

January 27, 2023
vk

(Vivek Puri)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No